

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **VICE CHAIRMAN GAIL GUTSCHE**, on March 2, 2001
at 3:00 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Gail Gutsche, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Rod Bitney (R)
Rep. Dee Brown (R)
Rep. Aubyn A. Curtiss (R)
Rep. Larry Cyr (D)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Rick Laible (R)
Rep. Jeff Laszloffy (R)
Rep. Douglas Mood (R)
Rep. Bob Story (R)
Rep. Brett Tramelli (D)
Rep. David Wanzenried (D)

Members Excused: Rep. Cindy Younkin, Chairman (R)
Rep. Rick Dale, Vice Chairman (R)
Rep. Gilda Clancy (R)

Members Absent: None.

Staff Present: Holly Jordan, Committee Secretary
Larry Mitchell, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 6, 2/19/2001; SB 7,
2/19/2001; SB 102, 2/19/2001
Executive Action: SB 6; SB 7; SB 102

HEARING ON SB 6

Sponsor: SEN. MACK COLE, SD 4, Billings

Proponents: Jeff Barber, Clark Fork Coalition
Lorna Karn, Montana Farm Bureau
Julia Page, NPRC
Tom Ebzery, Qwest
Geoff Geiss, Montana Telecom Association
Don Allen, WETA
Gail Abercrombie, Montana Petroleum Association
Carol Lambert, WIFE

Opponents: None.

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 0.7}

SEN. MACK COLE, SD 4, Billings, stated that SB 6 and SB 7 came out of the eminent domain subcommittee. The purpose of the bill is to state specifically, in the eminent domain statute, that the landowner is not liable except for instance of negligence or intentional conduct. The bill also provides attorney fees for property owners who are made a party to an action and not found liable for damages. It does not change the law but does clarify some of the eminent domain bills.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 2.5}

Tom Ebzery, Qwest, stated that this bill simply clarifies what rights a condemnee has for activities on his/her land on which an easement is placed. He gave a history of how this bill came about.

Geoff Geiss, Montana Telecom Association, stated that his association supports both SB 6 and SB 7.

Lorna Karn, Montana Farm Bureau, submitted written testimony **EXHIBIT** (nah48a01).

Carol Lambert, WIFE, stated that WIFE supports SB 6 and SB 7. The landowner should not be held responsible unless it was a deliberate act of negligence.

Julia Page, NPRC, stated these bills are a result of a lot of work done during the interim. She asked for a do concur.

Don Allen, WETA, stated that the two bills are part of the package of four bills that came out of the EQC study. He stated that WETA supports both SB 6 and SB 7. He stated that Gail Abercrombie of the Montana Petroleum Association couldn't be at the hearing but wanted him to express their support for both the bills. He asked for a do concur.

Jeff Barber, Clark Fork Coalition, stated that he is in support of SB 6.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 9.5}

REP. HURDLE asked **Ms. Page**, under "joint and several liability" doesn't it usually turn out that everybody is partly liable? What is your understanding of how liability would be determined?

Ms. Page stated that was discussed extensively. This is amending that part of the law and saying that not only is the landowner not liable in those instances but if they were named in a suit their legal fees could be paid for as long as they were not found to be the responsible party.

REP. HURDLE asked **Krista Lee** wouldn't she say the chances are that a landowner may be one of the people who would be determined as partially liable. **Ms. Lee** stated, under the new section 1 the landowner can be named as a potentially liable party. In the CECRA laws, which is the section 2, 75-10-715, it is inserted except as provided in section 1. Section 1 states, unless the negligence or intentional conduct of the condemnee or the condemnee successor in interest is the cause of the damage. On top of that, with what Ms. Page said, if they are named and they are not liable then the property owner's attorney fees are paid. If they are liable they are only severally liable, not joint liable.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 12.8}

SEN. COLE stated that SB 6 says that the landowner would not be liable except for negligence or intentional conduct.

HEARING ON SB 7

Sponsor: SEN. MACK COLE, SD 4, Billings

Proponents: Jeff Barber, Clark Fork Coalition
Lorna Karn, Montana Farm Bureau
Julia Page, NPRC
Tom Ebzery, Qwest
Geoff Geiss, Montana Telecom Association
Don Allen, WETA
Gail Abercrombie, Montana Petroleum Association
Steve Wade, BNSF

Opponents: None.

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 13.5}

SEN. MACK COLE, SD 4, Billings, stated, SB 7 is one of the most important bills that came out of the eminent domain subcommittee. It is a basic cleanup bill. It brings the language of eminent domain statute to current bill drafting standards. It also references each area throughout the code where eminent domain authority is granted.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 15.2}

Lorna Karn, Montana Farm Bureau, submitted written testimony EXHIBIT(1).

Tom Ebzery, Qwest, stated, SB 7 is a clean up bill. He asked for a do concur.

Steve Wade, BNSF, stated, BNSF supports any bill that clears up eminent domain and makes the process more workable. He asked for a do concur.

Julia Page, NPRC, stated, it is helpful to have all references to the statute in one place. The modernizing is a positive step. She asked for a do concur.

Don Allen, WETA, stated that WETA supports both SB 7. It seems like the sensible thing to do. He stated that Gail Abercrombie of the Montana Petroleum Association couldn't be at the hearing

but wanted him to express their support for the bill. He asked for a do concur.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 20.4}

REP. LAIBLE asked **SEN. COLE**, if there are any substantive changes in SB 7 other than just clean up language. **SEN. COLE** stated that he does not remember any substantive changes.

REP. BROWN asked **SEN. COLE**, regarding section 31, there have been substantial additions to that section, is it because we have updated our thought on cooperatives and had to add in lots of new things? **SEN. COLE** deferred to **Krista Lee** who stated a lot of the section is just renumbered and reorganized. She gave an example of this. She asked **REP. BROWN** for a specific part she was questioning. **REP. BROWN** stated pages 26 and 27. **Ms. Lee** stated sub 12 A-C and sub 13 have been removed and rewritten. There hasn't been any substantive changes it's strictly updating the language.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 23.5}

SEN. COLE gave a background on the eminent domain study. He asked for a do concur.

HEARING ON SB 102

Sponsor: **SEN. MACK COLE, SD 4, Billings**

Proponents: **Monte Mason, DNRC**

Opponents: None.

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 26.3}

SEN. MACK COLE, SD 4, Billings, stated that SB 102 simply authorizes exchange of state trust lands for state government and local government lands. It provides a clear authority to exchange the land with state and local government. Current authority was not specific in mentioning state and city

governments. The bill consolidates exchange authority for private, state and local governments into one statute. It repeals 77-2-202 that provided authority exchange of county government. Exchange authority with county governments is included within the proposed legislation.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 27.8}

Monte Mason, DNRC, stated, this bill deals with state lands managed by the Board of Land Commissioners. It does not add any new authority but rather corrects an omission in the statutes that provide guidance to the Land Board on land exchanges. It is a simple bill. He asked for a do concur.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 30}

REP. ERICKSON asked **Mr. Mason** if there is another section someplace that would allow a trade with the U.S. Forest Service with federal lands. **Mr. Mason** stated, there is a separate section that talks about federal and tribal lands with language specific to those entities.

REP. LAIBLE asked **Mr. Mason** why would you want to trade school trust lands? **Mr. Mason** stated, there are instances where the management objectives of both parties will be furthered by trading land. He gave some examples. **REP. LAIBLE** asked if there are any changes, as a result of these exchanges, in the beneficiaries. **Mr. Mason** stated that each beneficiary has to be treated separately so if it's to one beneficiary that's who the exchange land goes to.

REP. STORY asked **Mr. Mason** what does section 77-2-205 mean. **Mr. Mason** stated that section is an expectation by the legislature that before there's exchanges where other uses are contemplated that is fully flushed out and reviewed. **REP. STORY** asked, regarding line 6, would you have to get a value in exchange that is equal to the value of the property as developed. **Mr. Mason** stated that is true. When you appraise land for exchange you appraise it at its highest and best use. If the land that you are trading has potential to be some more intensive use you wouldn't trade it for its grazing value.

REP. MOOD asked **Mr. Mason** do you have to take into consideration the value of the development that would take place? **Mr. Mason** stated, under appraisal practice they look at the highest and best use of the land. **REP. MOOD** asked if he believes the language in the bill accomplishes the intent. **Mr. Mason** stated, it is ok because it says the value of the development is considered. It doesn't say it is included.

REP. GUTSCHE asked **Mr. Mason** how the process works, can the Land Board unilaterally trade land or does the beneficiary get any say? **Mr. Mason** stated the Land Board is the sayer of what the proper and prudent management of those lands should be. They are supposed to do that for the benefit of the school trust beneficiary. **REP. GUTSCHE** asked what this repeals. **Mr. Mason** stated section 77-2-202 is titled *Exchange of Lands With Counties* which contains language very similar to section 77-2-203 which is *Exchange for Private Land*. Those two sections are merged together in this bill.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 39.3}

SEN. COLE stated that Speaker McGee will carry both SB 6 and SB 7. He asked for a do concur.

EXECUTIVE ACTION ON SB 6

{Tape : 1; Side : A; Approx. Time Counter : 40.6}

Motion/Vote: **REP. ERICKSON** moved that **SB 6 BE CONCURRED IN**.
Motion carried unanimously.

EXECUTIVE ACTION ON SB 7

{Tape : 1; Side : A; Approx. Time Counter : 41.5}

Motion: **REP. ERICKSON** moved that **SB 7 BE CONCURRED IN**.

Discussion:

REP. GUTSCHE stated, regarding page 44, where the public uses are enumerated, this bill puts them all together. This is a really good example of what the bill does.

Vote: Motion **carried unanimously.**

EXECUTIVE ACTION ON SB 102

Motion: REP. YOUNKIN moved that **SB 102 BE CONCURRED IN.**

Discussion:

REP. HOLDEN stated that the committee may want to change the language on page 2, line 7. Strike the word "is" and insert the words "can be".

REP. YOUNKIN stated that the amendment should be to insert the word "potential" before "development" on page 2, line 6. When appraisers look at a property they don't include the value of the structure that is going to go on the property but they include the development potential of the property. This amendment may clear up any confusion.

Motion: REP. YOUNKIN moved that **SB 102 BE AMENDED AS ABOVE STATED.**

Discussion:

REP. HOLDEN asked if it should say "the potential development can be considered" rather than "is".

REP. YOUNKIN stated, in an appraisal you have to consider the potential development in determining the value of the property. If you say it can be or may be considered it sounds like you don't have to.

Mr. Mitchell stated it does not read grammatically correct with a can be in there. Exchange cannot be made unless the value is considered.

REP. HOLDEN asked if **REP. YOUNKIN's** amendment would be better.

REP. GUTSCHE stated she thinks so.

REP. STORY stated the amendment should put the word "development" in front of "value" and cross out "of such the". That would make the intentions pretty clear. It would read, "unless the development value is considered in determining..."

REP. BROWN stated if that was done, without the word potential it would mean there was going to be development, correct?

REP. STORY stated, they want to get the development value of the property.

REP. GUTSCHE asked **REP. STORY** to repeat his amendment.

REP. STORY stated, "An exchange for nongovernment-owned land under 77-2-203 may not be made that will induce or encourage large-scale commercial, industrial, or residential development unless the development value is considered in determining the fair market value..."

REP. MOOD stated that **REP. STORY's** amendment is right and clarifies the intent of the bill.

REP. YOUNKIN concurred that the substitute amendment is good.

Motion: **REP. STORY** moved the **SUBSTITUTE AMENDMENT ON SB 102, AS ABOVE STATED, BE ADOPTED.**

Discussion:

REP. GUTSCHE asked **REP. STORY** what is development value? **REP. STORY** stated it is a common term in real estate appraisal.

REP. YOUNKIN gave an example of development value.

Vote: Motion **carried unanimously.**

Motion: **REP. YOUNKIN** moved that **SB 102 BE CONCURRED IN AS AMENDED.**

Discussion:

REP. LAIBLE asked **REP. MOOD** if he sees any problems in this bill for school trust lands. **REP. MOOD** stated he does not. It is clarifying what is common practice today.

REP. STORY gave an example of why this bill is necessary.

Vote: Motion **carried unanimously.**

REP. LAIBLE stated he would carry the bill.

ADJOURNMENT

Adjournment: 4:00 P.M.

REP. CINDY YOUNKIN, Chairman

HOLLY JORDAN, Secretary

CY/HJ

EXHIBIT (nah48aad)